

Federal Court



Cour fédérale

Date: 20220715

Docket: T-382-22

Toronto, Ontario, July 15, 2022

PRESENT: Case Management Judge Martha Milczynski

BETWEEN:

**JEREMIAH JOST, VINCENT GIRCY,
EDWARD CORNELL AND HAROLD RISTAU**

Applicants

and

**GOVERNOR IN COUNCIL,
HER MAJESTY IN RIGHT OF CANADA,
AND ATTORNEY GENERAL OF CANADA**

Respondents

ORDER

UPON motion by the Applicants, heard virtually on July 14, 2022, for an order:

1. Pursuant to R. 91 through to and including R. 100 of the *Federal Courts Rules*, compelling the Respondents' affiant, Superintendent Denis Beaudoin ("Beaudoin") of the Royal Canadian Mounted Police ("RCMP") to produce the following documents and answer the following question of which the request, question, reply, and objections are summarized as follows:

No.	Question/Document	Objection
12	Will you undertake to provide true complete copies of the filled in template and schedules at Exhibit "A" regarding each of the Applicants Edward Cornell and Vincent Gircys that the RCMP provided to the financial institutions?	No undertakings required to be given. Affiant limited to providing relevant documents within his

		power, possession or control.
21	Will you undertake to provide true complete copies of the entire contents of the investigation files of the Applicants, Edward Cornell and Vincent Gircys, regarding any purported activity prohibited by sections 2 to 5 of the Emergency Measures Regulations P.C. 2022-0107?	No undertakings required to be given. Affiant limited to providing relevant documents within his power, possession or control.
47	Under s.5 of the Emergency Economic Measures Order, P.C. 2022-0108 entities set out in section 3 (i.e. service providers, banks etc.) must disclose without delay to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service the existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person, and any information about a transaction or proposed transaction in respect of said property. What is the number individuals (i.e. human beings) whose information was disclosed to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service under s.5 of the Emergency Economic Measures Order, P.C. 2022-0108?	I don't know.
48	What is the number of entities whose information was disclosed to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service under s.5 of the Emergency Economic Measures Order, P.C. 2022-0108?	I don't know. There was proactive disclosure made, but I am not certain of an exact number.
50	Can you undertake to produce the information from services providers and financial institutions regarding the Applicants Edward Cornell and Vincent Gircys that was disclosed under s.5 of the Emergency Economic Measures Order, SOR/2022-22 to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service?	No undertakings required to be given. Affiant limited to providing relevant documents within his power, possession or control.
52	Can you undertake to produce a true copy of the mandate of the Incident Response Group referred to in your affidavit?	No undertakings required to be given. Affiant limited to providing relevant documents within his power, possession or control.
53	Can you undertake to produce true copies of all minutes, notes, and records before and created by the members and attendees of the Incident Response Group meetings on February 10, 12 and 13, 2022 referred to in your affidavit?	No undertakings required to be given. Affiant limited to providing relevant documents within his power, possession or control.
74	It is understood that the RCMP created a document in 2021 regarding the status of the Canadian pipeline and railway protests titled "Royal Canadian Mounted Police Situation Report" that was authored and provided	Not relevant.

	department heads of Indigenous Services Canada and Crown-Indigenous Relations prior to an October 19, 2021 meeting between them and Commissioner Brenda Lucki of the RCMP. The RCMP would have completed such “situation reports” or like reports with a different title regarding the protests and purported blockades in Ottawa and throughout Canada between January 27, 2022, and February 14, 2022?	
75	Will you undertake to produce all or any of the “situation reports” or like reports with a different title regarding the protests and purported blockades in Ottawa and throughout Canada between January 27, 2022, and February 14, 2022 that were authored or issued by the RCMP prior to the invocation of the Emergencies Act on February 14, 2022?	No undertakings required to be given. Affiant limited to providing relevant documents within his power, possession or control.

2. That following the disposition of the herein motion, no matter the result, that the Applicants be able to orally question Beaudoin on his affidavit in response to the Written Examinations sworn on June 20, 2022, or in the alternative, the Applicants be permitted to do further Written Examinations in the same vein.
3. Such other further orders, directions, or relief the Court deems fit.

AND UPON hearing the submissions of counsel and granting the motion in part at the conclusion of the hearing;

The individual Applicants have commenced the within application for judicial review in respect of the *Proclamation Declaring a Public Order Emergency*, made under the *Emergencies Act* and the two regulations made under the *Act*, the *Emergency Measures Regulations* and the *Emergency Economic Measures Order*. The application is proceeding alongside three other applications (Court Files T-306-22; T-316-22 and T-347-22) which, it is anticipated, will be heard some time later this year.

As part of its evidence served pursuant to Rule 306 of the *Federal Courts Rules*, the Attorney General of Canada, served the affidavit of Denis Beaudoin. Mr. Beaudoin is a superintendent for the Royal Canadian Mounted Police (RCMP) and is currently the Director of Financial Crime, Federal Policing, Criminal Operations, overseeing financial crime operations for the RCMP nationally.

Mr. Beaudoin was responsible for overseeing the use of the economic measures put in place under the *Emergencies Act* proclamation. He developed the process used by the RCMP for verifying and sharing information that had been gathered by police with financial institutions/financial service providers. Mr. Beaudoin states that the information that was gathered related to people and companies potentially involved in illegal activities, and which then gave financial service providers the ability to freeze financial products pursuant to the *Emergency Economic Measure Order*. He states that the RCMP worked closely with municipal and provincial policing partners, including the Ontario Provincial Police and Ottawa Police Service.

Information was conveyed to the financial institutions by way of a form, a blank template of which was attached as Exhibit A to Superintendent Beaudoin's affidavit. Mr. Beaudoin provides details regarding the type of information collected by the police services, and identifies the range of financial service providers to whom that information was provided.

At paragraphs 36 and 37 of his affidavit, Mr. Beaudoin confirms that the RCMP disclosed the names of the Applicants, Edward Cornell and Vincent Gircy to financial institutions.

The Applicants elected to conduct cross-examinations, including that of Mr. Beaudoin in writing. Mr. Beaudoin provided answers in the form of an affidavit. The within motion concerns a number of questions that were refused.

The central issue on this motion is whether, in light of a cross-examination being conducted in writing, whether or how the Applicants can obtain production of documents as they might had the cross-examination been conducted orally, with service of a Direction to Attend. The AGC's position is that it is improper to seek production of documents through the written examination – that cross-examination is not examination for discovery and that an affiant is not obliged to give undertakings. At best, the AGC argued that the Applicants ought to have made a request or served a Direction to Attend pursuant to Rule 91(2)(c), prior to delivering their written cross-examination.

While framed in the written examination as a request to give an undertaking to produce documents, the Applicants submit that making the request through the written examination is proper and that there is no other or

specific mechanism under the Rules to require production– also that Rule 91(1)(c) has no direct application to written examinations. Rule 91 provides:

91(1) A party who intends to conduct an oral examination shall serve a direction to attend, in Form 91, on the person to be examined and a copy thereof on every other party.

91(2) A direction to attend may direct the person to be examined to produce for inspection at the examination.

(c) In respect of a cross-examination on an affidavit, all documents and other material in that person's possession, power or control that are relevant to the application...

It would be an anomalous situation to require documents to be produced in advance pursuant to a Direction to Attend for a written examination (where the Rule and form specifically address oral cross-examination) but only at the commencement of cross-examination if conducted orally. There is no provision for this in the Rules or otherwise. It ought not also be a consequence of conducting a cross-examination in writing, that production of documents is forever foreclosed. Although conducting the cross-examination in writing with the request for documents therein means that there is little or no ability to ask questions about them in that same cross-examination, that may well be the consequence of choosing to conduct cross-examinations in that manner. Cross-examination of an affiant is not examination for discovery.

Accordingly, it is fair and reasonable to view the requests for specific documents in the written examination as analogous to a request contained in a Direction to Attend. Documents that exist, that are listed and sufficiently identified in the written examination, relevant and within the power, possession and control of the person being cross-examined should be produced, subject to a claim of privilege, or relief being granted on the grounds that the documents are too numerous or it would be overly onerous to produce.

With respect to the within motion, the documents sought are specific and directed to the information gathered by the RCMP or the police services and conveyed to financial institutions:

Q.12 – the template at Exhibit A of Mr. Beaudoin’s affidavit that was filled in for the Applicants, Edward Cornell and Vincent Gircy;

Q.21 – the contents of the investigation files for the Applicants, Edward Cornell and Vincent Gircy regarding their purported illegal/prohibited activity (as referred to by Mr. Beaudoin in paragraphs 36 and 37 of his affidavit;

Q.50 – information from financial service providers/financial institutions regarding the Applicants, Edward Cornell and Vincent Gircy that was disclosed under section 5 of the *Emergency Economic Measures Order* to the Commissioner of the RCMP or to the Director of the Canadian Security Intelligence Service; and

Q.75- any reports (as described in Q.75) regarding the “protests and purported blockades in Ottawa and elsewhere in Canada between January 27, 2022 and February 14, 2022 – that were authored or issued by the RCMP prior February 14, 2022”.

These documents are relevant to the issues raised in the application concerning the *Charter* and the constitutionality of the proclamation and economic measures. If they exist and are within the power, possession or control of Mr. Beaudoin (including his ability or right to have access to them by virtue of his position or authority within the RCMP), they should be produced.

With respect to question 52 and 53, disposition is deferred pending the determination of other motions.

With respect to questions 47 and 48, Mr. Beaudoin answered that he did not know the answer to the questions. He is not obliged to undertake to obtain the information sought and will not be compelled so to do.

THIS COURT ORDERS that:

1. The motion is granted in accordance with the above for Questions 12, 21, 50 and 75 of the Applicants’ written examination.
2. Disposition of Questions 52 and 53 are deferred to another date.
3. The balance of the motion (Question 47, 48 and for further cross-examination) is dismissed.

4. If the parties cannot agree to the costs of this motion, they may file written submissions (no longer than 2 pages in length) within 10 days of the date of this Order.

"Martha Milczynski"
Case Management Judge